

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

62-11997

In the Matter of)
)
Annual Assessment of the Status of) CS Docket No. 97-141
Competition in Markets for the)
Delivery of Video Programming)

NOTICE OF INQUIRY

REPLY COMMENTS OF THE WGBH EDUCATIONAL FOUNDATION IN THE NOTICE OF INQUIRY REGARDING VIDEO DESCRIPTION

To The Commission:

1. The WGBH Educational Foundation is writing in response to your request for reply comments in the "Notice of Inquiry," in the above-captioned proceeding, adopted June 3, 1997.

I. INTRODUCTION

2. The WGBH Educational Foundation is one of the country's leading public broadcasters and has long considered one of its central missions to be increasing access to media for people with disabilities.

II. FEASIBILITY

3. In its Comments to the FCC "Notice of Inquiry" in this matter¹ the Motion Picture Association of America (MPAA) stated, "the ability to broadcast a third audio channel ranges from a few stations that are currently equipped..."². Based on a 1996 survey, SAP-based audio services are available to 44% of all television households via SAP-equipped affiliates of at least one of the major commercial networks (these figures do not include the 144 PBS member stations with SAP capability; those stations cover more than 78% of American homes).

¹ FCC Notice of Inquiry, "Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming," released June 3, 1997, CS Docket No. 97-141.

² Comments to FCC CS Docket No. 97-141 from the Motion Picture Association of America, Inc., July 23, 1997, page 3.

4. In 1996, WGBH conducted a telephone survey of the engineering departments of the largest affiliates of one of the major commercial television networks. Each of the affiliate's engineers were asked if they have SAP equipment in place and if they could broadcast video description on the SAP. Twenty-two of the twenty-seven affiliates responded positively to having SAP equipment in place; most routinely use the SAP for such services as second-language broadcasts on syndicated programming, special network feeds, and promotional and advertising messages. These twenty-two affiliates represent 44% of all television households or 42.5 million television households.³ Twenty of those twenty-two affiliates also responded positively to the feasibility of a SAP broadcast with video description. These twenty stations represent 41% of all television households or 39 million television households.⁴ The surveyed engineers also indicated that routing a network feed to their SAP equipment entails a push of a button or a plugging in a simple patch cord.

5. While it is true that not every station in the country can provide video description today, many U.S. stations can do so with existing SAP equipment. Other stations that have not yet purchased SAP equipment could make the relatively small investment to upgrade their technical capabilities. In any case, all stations should make plans to carry video description, foreign language translation, and other services for underserved audiences via the ancillary audio capabilities of the new digital broadcasting technology which is coming online over the next few years. Advocates from the blind community have never suggested an immediate, 100% requirement for video description, but rather a multi-year, phased-in implementation plan covering a certain percentage of appropriate programming. Such a plan would over time increase the percentage of described programs produced and would simultaneously increase the ability to receive such programs in television households. Eventually video description and other ancillary audio services would be available to all television households (either via the SAP in today's NTSC system or in the coming years via the increased capacity of the new digital television standard).

6. Although no one knows when the majority of citizens will have purchased a digital television set, it is clearly several years away. Meanwhile SAP provides an existing delivery system to better serve blind and visually impaired audiences now. And many of the programs which will eventually air on the digital system of the future will be produced today in the analog format and subsequently converted to digital. Today's efforts to make programming accessible will be portable to future systems.

7. The fact that SAP is being used to benefit other underserved audiences provides more credence to its feasibility. The National Cable Television Association (NCTA) also comments, "While it is our understanding that many

³ Figures based on Nielsen 1996 Designated Market Areas (DMAs).

⁴ Ibid.

cable operators already carry SAP signals transmitted by programmers, the SAP is being used to provide other services, including Spanish language audio and other services of interest to the community."⁵ If SAP was being used 100% of the time for foreign-language translation, for example, then there would be a capacity problem and a conflict. But this is far from the case - only an occasional program utilizes the SAP channel for foreign languages and these are mostly on the local, not national, level. Until digital is widely available, the SAP can continue to be used and shared to serve a variety of audiences including blind and visually impaired viewers.

8. The companies represented by the MPAA and NCTA should appreciate the added usage and exploitation of the SAP signal promised by video description: when the SAP is not in use by other services, video description helps justify and amortize any additional costs associated with installing and maintaining SAP equipment in general.

III. FUNDING

9. MPAA states that none of the existing federal funders "are secure to ensure future funding."⁶ Availability of public funds to make the television industry's products accessible should not be the criteria for additional FCC action. Government funding of video description should only act to "prime the pump," to demonstrate the feasibility of video description, and then to let the television industry take greater responsibility for providing accessible programming. This precedent already exists for video description, where every year greater amounts of private-sector funding are leveraged by more effective application of Federal grants. To be consistent in its desire for limited and judicious government involvement in its members' businesses, the MPAA should welcome a lesser role for public-sector funding as well.

10. MPAA also states, "As household penetration of stereo television receivers increases over time, the marketplace can be expected to respond with increased product for the larger number of visually impaired viewers capable of receiving video described programming."⁷ The availability of stereo televisions has grown tremendously each year to the point where today a majority of television sets are stereo. Nonetheless, the marketplace has failed to take this growth into account: to our knowledge, not one commercial television program has ever been aired with SAP descriptions funded by a producer or distributor or anyone other than the U.S. Department of Education. We applaud the Turner Classic Movies cable network for their participation (and time and expense) in airing 33 movies with description, but it is important to note that the actual

⁵ Comments to FCC CS Docket No. 97-141 from the National Cable Television Association, July 23, 1997, page 48.

⁶ Comments to FCC CS Docket No. 97-141 from the Motion Picture Association of America, Inc., July 23, 1997, page 6.

⁷ Ibid. page 4.

description of all 33 films was funded by the U.S. Department of Education through a cooperative agreement with WGBH's Descriptive Video Service.⁸

11. Only public television producers, with their notoriously limited budgets, have made some increase in described programming by budgeting for the description of select programs and series. Examples of producer-funded description include TRAVELS WITH AL ROKER, OUT OF SIGHT, PEOPLE IN MOTION, PAVING THE WAY and GREAT TALES IN ASIAN ART. In addition, WGBH, which produces one-third of all national prime-time programming on public television, recently instituted a policy to include video description in the production budgets of several national productions. New, upcoming WGBH series with description in the production budgets include A SCIENCE ODYSSEY, AFRICANS IN AMERICA and the popular daily children's program ARTHUR.

12. Though there has been a significant increase in both the market penetration of stereo television receivers with SAP reception capability and station affiliate's capability to carry SAP, there has been no movement from the commercial broadcast and cable networks to respond with increased product (with the exception of the afore-mentioned Turner Classic Movies).

IV. VIDEO DESCRIPTION PROVIDER CAPACITY

13. The MPAA states "video description mandates would encounter a severe bottleneck in the abilities of the industry to gain product with video description."⁹ This would only occur if the mandate was not phased in over a period of time. Since no commenters are suggesting an immediate requirement for description of all programming, any phase-in could take into account the existing provider capacities and their ability to expand along with new entrants into the field.

14. A phased-in requirement would provide the market with the time to start-up several additional competing services. This healthy competition would reduce rates and increase customer service among video description vendors. MPAA's concern for the available quantity of resources must be matched with attention to quality of service. Price, without regard to quality, should not become the only deciding factor when a producer or distributor decides to make their programming accessible to people who are blind or visually impaired.

V. COPYRIGHT

15. The MPAA stated, "By virtue of its creative nature, video description may be a 'derivative work' under copyright law. The making of a derivative

⁸ Grant #H026C40001, Broadcast and Cable Television Description, United States Department of Education .

⁹ Ibid. page 6.

work is one of the exclusive rights of a copyright owner."¹⁰ Copyright infringement has never been an issue for the copyright owners of the programs and movies already described by WGBH and other vendors. WGBH has, in every single case, received the permission of the copyright owners for these thousands of hours of programs and movies. An involuntary ceding of copyright has never been suggested in these proceedings.

VI. VOLUNTARY EFFORTS

16. The MPAA states "some congenitally blind individuals with no visual memory attest that current video description techniques may hamper the manner by which they experience television." For more than ten years WGBH has received extensive feedback from viewers and focus groups about video description style preferences. To date, none of the feedback has indicated that video description hampers the manner in which the intended audience experiences television. In any case, though a vast majority of blind and visually impaired viewers appreciate described programming, a viewer can simply choose not to turn on the SAP channel and thereby enjoy the program without description. At the heart of any FCC action on video description (or on closed captioning for that matter) is choice: viewers should be given the choice to enjoy programming in their preferred mode. The SAP button and its eventual digital successor will allow such choice only if programming includes video description to begin with.

17. The MPAA also stated, "video description methods and techniques must be researched carefully before any implementation occurs to ensure that video description benefits visually impaired, congenitally and adventitiously blind individuals."¹¹ The recent American Foundation of the Blind landmark study, "Who's Watching: A Profile of the Blind and Visually Impaired Audience for Television and Video,"¹² confirms that video description is very important to visually impaired people's enjoyment of television programs and it enhances their television experience overall. WGBH has been researching the methods and techniques of video description on an ongoing basis for more than ten years. Narrative Television Network and other organizations have also been researching description extensively. The concept has also been available on television nationwide for nearly a decade. Further study is simply not called for.

¹⁰ Ibid., page 7.

¹¹ Ibid.

¹² Who's Watching? A Profile of the Blind and Visually Impaired Audience for Television and Video, American Foundation of the Blind, page 24-25, Copyright 1997.

VII. OTHER

18. Another commenter, Helen Harris stated, "Sighted family members prefer not to hear the description of things they can see on the screen" in reference to the use of SAP¹³. We disagree with this statement which does not include reference to any research to support it. In contrast, the American Foundation for the Blind conducted an in-depth study of video description which reported 87% of respondents saying description never or rarely interfered with the enjoyment of the programming for sighted people. Only 10% said it interfered "often" and 3% said it "always" interfered.¹⁴ In addition our anecdotal information, from more than 10 years of focus groups, reports that sighted people often not only appreciate the quality of our video description, but have a greater understanding when viewing a described program with a visually impaired family member or friend. We also have received positive comments from sighted people who intentionally switch on the SAP to use and enjoy the added narrative description even though no one in their family is visually impaired.

VIII. CONCLUSION

19. MPAA stated, "MPAA members expect to voluntarily provide more programming with video description as demand for this service increases and as technological innovation shapes the digital world."¹⁵ Demand has indeed been high and the time for technological innovation is now, for new television systems and their accessibility components. MPAA's responses to consumer pressures have not yielded more accessible programming in the home video marketplace, another industry represented by MPAA.

20. The demand for the service has increased dramatically over several years and there are no technical obstacles to providing described home videos, yet all but one of the more than 150 described home video titles available in the marketplace has been enabled through federal funding. The only exception is SCHINDLER'S LIST, which was funded by Universal Home Video.

21. Even if the ultimate solution lies in the capabilities of digital television, action on policies and standards should have begun months ago to prepare for the imminent testing and launch of digital television across the country. Stockpiles of described programming should be built up now (and used on today's system) so that when the rest of American begins to enjoy the new better-sounding and -looking digital television, blind and visually impaired Americans are given equal access and opportunity.

¹³ Comments to FCC CS Docket No. 97-141 from Helen Harris, July 22, 1997, page 7.

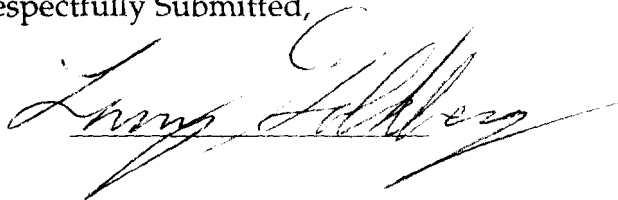
¹⁴ Who's Watching? A Profile of the Blind and Visually Impaired Audience for Television and Video, American Foundation of the Blind, page 21, Copyright 1997.

¹⁵ Comments to FCC CS Docket No. 97-141 from the Motion Picture Association of America, Inc., July 23, 1997, page 8.

22. As stated in our initial comments, advocates for blind and visually impaired citizens will speak for themselves and decide whether or not to recommend federal mandates for video description similar to the recent captioning mandates. As a vendor, WGBH is not in the position to recommend either mandates or voluntary compliance. As a public broadcaster, WGBH's position continues to be as a researcher and provider of accessible media. The MPAA, NCTA, their members, broadcasters, and other decision-makers in the media have a unique opportunity to reshape our Information Age to provide a level-playing field for all consumers. They can take full advantage of the available technologies to serve all audiences and they can meet their public interest obligations at the same time. Or they can continue to assume that large segments of our society will be left to the mercies of the marketplace, with their needs decided by the bottom line.

23. Like many ventures involving mass media, the success of video description has required ongoing collaboration of many partners from a range of dedicated supporters in the public, private and non-profit sectors. Now that the Telecommunications Act is being implemented and the television industry has responded positively to the recent FCC mandate for closed captioning, such cooperation will be essential to assure that blind and visually impaired Americans share in the technological benefits soon to be offered in communities throughout the country.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Larry Goldberg", written over a horizontal dashed line.

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